

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PATRICIA LIEBING,

Plaintiff,

v.

Case No.: 2:20-cv-556-FtM-38NPM

CIRCLE K STORES, INC.,

Defendant.

ORDER¹

Before the Court is Plaintiff Patricia Liebing's Motion to Remand ([Doc. 6](#)) and Defendant Circle K Stores, Inc. Response in Opposition ([Doc. 14](#)).

Liebing filed this slip-and-fall case in state court. ([Doc. 3](#)). Liebing alleges Circle K was negligent in maintaining the premises and failing to warn of a dangerous condition. Circle K removed on diversity grounds. ([Doc. 1](#)). Liebing now moves to remand because Circle K did not establish an amount in controversy to invoke this Court's subject-matter jurisdiction.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). District courts, therefore, remand any case that was "without the necessary jurisdiction." *Estate of Ayres ex rel. Strugnell v. Beaver*, 48 F. Supp. 2d 1335, 1339 (M.D. Fla. 1999). "Where there is any doubt concerning jurisdiction of the federal court on removal, the case should be remanded." *Id.* (internal

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quotations omitted). The party seeking removal must meet the burden of satisfying the jurisdictional requirements for removal. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001).

The removal statutes permit a defendant to move a case from state to federal court provided the case could have brought in federal court. 28 U.S.C. § 1441 (governing removal); *id.* at § 1446 (establishing the procedure for accomplishing removal). Federal courts have original jurisdiction if the amount in controversy exceeds \$75,000, exclusive of interest and costs, and there is completely diverse citizenship of parties. 28 U.S.C. § 1332(a); *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1261 (11th Cir. 2000).

Where, as here, plaintiff made an unspecified demand for damages in her complaint, the removing defendant must prove by a preponderance of the evidence that the amount in controversy more likely than not exceeds the \$75,000 jurisdictional minimum. *Leonard v. Enterprise Rent a Car*, 279 F.3d 957, 972 (11th Cir. 2002); *Williams*, 269 F.3d at 1319. Ultimately, the question is whether the notice of removal plausibly alleges that “the amount in controversy at the time of removal” exceeds \$75,000. *S. Fla. Wellness, Inc. v. Allstate Ins.*, 745 F.3d 1312, 1315 (11th Cir. 2014). So the issue here is whether Circle K showed the amount in controversy more likely than not exceeded \$75,000 when it removed.

In asserting the amount in controversy, Circle K relied on Liebing’s interrogatory answers. (Doc. 1-1). Circle K posed, “List each item of expense that you claim to have incurred as a result of the injuries sued on in this action.” (Doc. 1-1 at 5). Liebing responded with an itemized list of medical expenses separated by medical providers totaling over \$100,000. (Doc. 1-1 at 5). In other words, Liebing’s medical expenses alone

were over \$100,000 before removal. The Court, therefore, need not wade into any of the more uncertain claimed damages like pain and suffering or lost future earnings.

In a conclusory way, Liebing contends this is insufficient to show the amount in controversy exceeds \$75,000 by a preponderance of the evidence. Yet Liebing failed to argue why in the Motion. Instead, Liebing speaks to the facts of an auto insurance case between a couple named the Barton's and State Farm. It appears counsel simply cut-and-pasted several pages from a motion in that case without bothering to change the facts. Regardless, that case is inapposite because neither plaintiff's medical expenses there exceeded \$20,000 at the time of removal. While Liebing provided unexplained evidence of medical bills to some of her medical providers totaling at least \$61,875 ([Doc. 6-3](#)), these bills do not appear to account for all the expenses Liebing incurred like the additional \$19,000 owed to NCH ([Doc. 1-1 at 5](#)). Without any evidence or argument in rebuttal, the facts at hand show Liebing's medical expenses exceeded \$75,000 when Circle K removed.

Accordingly, it is now

ORDERED:

Plaintiff's Motion to Remand ([Doc. 6](#)) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida this 31st day of August, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record